



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1994

Mr. Robert P. Rose
Assistant City Attorney
City of Austin
Department of Law
P.O. Box 1088
Austin, Texas 78767-8828

OR94-210

Dear Mr. Rose:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25033.

The Austin Police Department (the "department") received an open records request for the following information:

any and all material obtained by and in the possession of the Austin Police Department relating to the promotion of prostitution case involving Texas Department of Human Services employee James A. Bunch.

This includes complete copies of any and all documents relating to both clients of and callers to Aimes Escort Service, all computer files and both handwritten and printed records recovered at the Texas Department of Human Services

You have submitted to this office for review a representative sample of the requested documents.¹ You contend that the requested records come under the protection of, *inter alia*², section 552.108 of the Government Code.

¹You explain that the department has seized approximately six boxes of records which are currently being reviewed by investigators.

²Because we resolve your request under section 552.108, we need not address your section 552.101 arguments at this time.

Section 552.108, known as the "law enforcement" exception, excepts from required public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . [and;]
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement.

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986).

Evidence obtained at the scene of a crime is presumptively excepted by section 552.108 during the pendency of an investigation and prior to prosecution. Attorney General Opinion MW-446 (1982) (and authorities cited therein). Because criminal charges are currently pending in connection with this matter, the department may withhold the requested records at this time² pursuant to section 552.108.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref.: ID# 25033
ID# 25071
ID# 25210
ID# 25263

²This ruling does not address the extent to which the department may continue to withhold these records after the criminal trials stemming from this case have ended.

Enclosures: Submitted documents

cc: Mr. Joe Izbrand
News Director
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510 Lovett Boulevard
Houston, Texas 77006
(w/o enclosures)